



Billing Code: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2009-0810, FRL-9901-04-Region 8]

Approval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 PM_{2.5} National Ambient Air Quality Standards; Prevention of Significant Deterioration Requirements for PM_{2.5} Increments and Major and Minor Source Baseline Dates; Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) submissions from the State of Colorado to demonstrate that the SIP meets the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for PM_{2.5} on July 18, 1997 and on October 17, 2006. The CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet infrastructure requirements. The State of Colorado provided infrastructure SIP submissions on April 4, 2008 and June 4, 2010 for the 1997 and 2006 PM_{2.5} NAAQS, respectively. In addition, EPA is approving portions of SIP revisions submitted by the State of Colorado on May 11, 2012 and May 13, 2013. The revisions update Regulation 3 of the Air Quality Control Commission permitting requirements for the Prevention of Significant Deterioration (PSD) program to incorporate the required elements of the 2008 PM_{2.5} NSR Implementation Rule and the 2010 PM_{2.5} Increment Rule.

DATES: This final rule is effective [**Insert date 30 days after publication in the Federal Register**].

ADDRESSES: EPA has established a docket for this action under Docket ID No.EPA-R08-

OAR-2009-0810. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathy Ayala, Air Program, U.S.

Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6142, ayala.kathy@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The initials CBI mean or refer to confidential business information.
- (iii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.

- (iv) The initials NAAQS mean or refer to national ambient air quality standards.
- (v) The initials PM mean or refer to particulate matter.
- (vi) The initials PM_{2.5} mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers (fine particulate matter).
- (vii) The initials PSD mean or refer to Prevention of Significant Deterioration.
- (viii) The initials SIP mean or refer to State Implementation Plan.

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I. Background

Infrastructure requirements for SIPs are provided in section 110(a)(1) and (2) of the CAA. Section 110(a)(2) lists the specific infrastructure elements that a SIP must contain or satisfy. The elements that are the subject of this action are described in detail in our notice of proposed rulemaking (NPR) of May 23, 2013 (78 FR 30830).

In our NPR, we proposed to act on submissions from the State of Colorado to address infrastructure requirements for the 1997 and 2006 PM_{2.5} NAAQS. The NPR proposed approval of the submissions with respect to the following infrastructure elements for the 1997 and 2006 PM_{2.5} NAAQS: CAA Sections 110(a)(2)(A), (B), (C) with respect to minor NSR requirements, (E), (F), (G), (H), (J) with respect to the requirements of sections 121 and 127 of the Act, (K), (L), and (M). The reasons for our approval are provided in detail in the NPR.

For reasons explained in the NPR, EPA also proposed to approve the submissions for infrastructure elements (C) and (J) with respect to PSD requirements for the 1997 and 2006 PM_{2.5} NAAQS. Concurrently, EPA proposed to approve revisions to Regulation 3 submitted by Colorado on May 11, 2012, and May 13, 2013, which incorporate the requirements of the 2008 PM_{2.5} NSR Implementation Rule and the 2010 PM_{2.5} Increment Rule; specifically, revisions to: Regulation 3, Part D, sections II.A.5.a and b, II.A.23.a and b, II.A.25.a.(i), a.(ii), a.(iii), and b.(i), II.A.38.c and g, II.A.42.a., and X.A.1., as submitted on May 11, 2012, and revisions to Regulation 3, Part D, sections II.A.23.c., as submitted on May 13, 2013. EPA is taking no action at this time on infrastructure element (D) for the 2006 PM_{2.5} NAAQS.

II. Response to Comments

EPA received one comment. The commenter generally supported the EPA's proposed action. However, the commenter noted that EPA had recently promulgated revised PM_{2.5} standards (78 FR 3086, January 15, 2013) and stated that the Colorado submissions did not reflect these revised standards. The commenter recommended that EPA should approve the infrastructure SIPs as submitted, but that Colorado should submit a revised SIP addressing the new PM_{2.5} standards.

Response: We note the commenter's general support for our action. However, we disagree with the comment to the extent that it implies that the Colorado submissions we are acting on are deficient in not addressing the newly revised 2012 PM_{2.5} standards. Colorado's April 4, 2008 and June 4, 2010 submissions addressed infrastructure requirements for the 1997 and 2006 PM_{2.5} NAAQS, respectively. We have evaluated the submissions based on the requirements of sections 110(a)(1) and (a)(2) and the CAA with respect to those standards. To

the extent that the 2012 PM_{2.5} NAAQS may in the future require any SIP revisions for infrastructure purposes, we will then evaluate Colorado's infrastructure submission for the 2012 PM_{2.5} NAAQS with respect to those requirements.

III. Final Action

EPA is approving the following infrastructure elements for the 1997 and 2006 PM_{2.5} NAAQS: CAA section 110(a)(2)(A), (B), (C) with respect to minor NSR requirements, (E), (F), (G), (H), (J) with respect to the requirements of sections 121 and 127 of the Act, (K), (L), and (M). EPA is approving infrastructure elements (C) and (J) with respect to PSD requirements for the 1997 and 2006 PM_{2.5} NAAQS. EPA is approving revisions to Regulation 3 submitted by Colorado on May 11, 2012 and May 13, 2013, which incorporate the requirements of the 2008 PM_{2.5} NSR Implementation Rule and the 2010 PM_{2.5} Increment Rule; specifically, revisions to: Regulation 3, Part D, sections II.A.5.a and b, II.A.23.a and b, II.A.25.a.(i), a.(ii), a.(iii), and b.(i), II.A.38.c and g, II.A.42.a., and X.A.1., as submitted on May 11, 2012, and revisions to Regulation 3, Part D, section II.A.23.c, as submitted on May 13, 2013. EPA is taking no action at this time on infrastructure element (D) for the 2006 PM_{2.5} NAAQS

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175

(65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 29, 2013

Howard M. Cantor
Deputy Regional Administrator
Region 8

40 CFR part 52 is amended to read as follows:

PART 52 APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart G - Colorado

2. Section 52.320 is amended by adding paragraph (c)(126) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(126) On May 11, 2012 and May 13, 2013 the State of Colorado submitted revisions to the State Implementation Plan that incorporate the required elements of the 2008 PM_{2.5} NSR Implementation Rule and the 2010 PM_{2.5} Increment Rule.

(i) Incorporation by reference

(A) 5 CCR 1001-5, Regulation Number 3, Stationary Source Permitting and Air Pollutant Emission Notice Requirements, Part D, Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration, Section II, Definitions, Section II.A.5, Baseline Area, II.A.5.a. and II.A.5.b.; Section II.A.23., Major Source Baseline Date, II.A.23.a. and II.A.23.b.; II.A.25., Minor Source Baseline Date, II.A.25.a., II.A.25.b. introductory text, and II.A.25.b.(i); II.A.38, Regulated NSR Pollutant, II.A.38.c., II.A.38.g.; II.A.42., Significant, II.A.42.a.; Section X, Air Quality Limitations, X.A., Ambient Air Increments, X.A.1., effective on 12/15/11.

(B) 5 CCR 1001-5, Regulation Number 3, Stationary Source Permitting and Air Pollutant

Emission Notice Requirements, Part D, Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration, Section II, Definitions, II.A.23., Major Source Baseline Date, II.A.23.c., effective on 2/15/13.

3. Section 52.353 is amended by redesignating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.353 Section 110(a)(2) infrastructure requirements.

* * * * *

(b) On April 4, 2008 James B. Martin, Executive Director, Colorado Department of Public Health and Environment, provided a submission to meet the infrastructure requirements for the State of Colorado for the 1997 PM_{2.5} NAAQS. On June 4, 2010, Martha E. Rudolph, Executive Director, Colorado Department of Public Health and Environment, provided a submission to meet the infrastructure requirements for the State of Colorado for the 2006 PM_{2.5} NAAQS. The State's Infrastructure SIP is approved with respect to the 1997 and 2006 PM_{2.5} NAAQS with respect to section (110)(a)(1) and the following elements of section (110)(a)(2): (A), (B), (C) with respect to PSD and minor NSR requirements, (E), (F), (G), (H), (J) with respect to PSD requirements and the requirements of sections 121 and 127 of the Act, (K), (L), and (M).